



**Circular No 248/2020
Dated 5 Aug 2020**

To Members of the Malaysian Bar

**General Information on Matters Discussed
at the 3rd BC Meeting Held on 11 July 2020**

Please find below the above-mentioned General Information for your attention.

(1) The Arbitration Subcommittee's Proposal to Amend the Arbitration Act 2005

There are two proposed amendments relating to the supervisory role of the Courts vis-à-vis arbitral awards.

On 8 May 2018, the Arbitration Act 2005 was amended to entirely abolish the supervisory jurisdiction of the Courts over domestic arbitration. This has now been perceived as a disproportionate reaction to the decision of the Federal Court in *Far East Holdings Berhad & Anor v Majlis Ugama Islam dan Adat Resam Melayu Pahang and other appeals* [2018] 1 MLJ 1, where the Court gave an expansive interpretation to its supervisory jurisdiction over domestic awards. The Arbitration Subcommittee has proposed the reintroduction of an amended section 42 of the Arbitration Act 2005, which would give the Court limited supervisory jurisdiction on points of law in respect of domestic arbitration awards, but only with leave of Court. This would align Malaysian law with other Commonwealth jurisdictions, particularly Singapore.

In *Sigur Ros Sdn Bhd v Master Mulia Sdn Bhd* [2018] 3 MLJ 608, the Court of Appeal held that where there has been some procedural failure in the making of an arbitration award, such as a breach of natural justice, the Court only has the power to either set aside the award or uphold it. The Arbitration Subcommittee has proposed amendments to section 37 of the Arbitration Act 2005, to give the Court additional powers, including the power to vary the award or remit it for reconsideration by the arbitral tribunal.

(2) Issuance Of "Cease and Desist" Letter By Trade Mark Agent

The Bar Council was apprised of a situation in which a private limited company carrying out the business and functions of a trade mark agent had issued a "cease and desist" letter to another private limited company that was purportedly contravening intellectual property rights. The contents of the letter and the acts of the trade mark agent appeared to be a clear encroachment of the functions of an advocate and solicitor, and as such, a breach of sections 36(1), 37(2) and 37(2A) of the Legal Profession Act 1976 ("LPA").

The Bar Council had, in February 2020, written to the trade mark agent regarding the "cease and desist" letter and requested an undertaking from the agent that it would not issue such letters in the future or act in any manner that contravenes the provisions of the LPA. In

response, the agent cited section 98 of the Trade Marks Act 2019 as the basis for its actions, in relation to the “cease and desist” letter.

The Bar Council Intellectual Property Committee has considered the matter, and is of the view that the Malaysian Bar has a reasonable basis to proceed against the transgressing trade mark agent. The Bar Council has decided that the Malaysian Bar shall initiate legal proceedings against the said trade mark agent.

(3) New Rule 20.1 of the Rules and Rulings of the Bar Council

The new Rule 20.1 of the Rules and Rulings of the Bar Council was made under section 57(a) of the LPA. It states the following:

“The Bar Council may, in writing, waive any of these Rulings, if required.

This Ruling is to allow the Bar Council to provide waivers for Rulings in times needed.”

This rule is important because it provides the Bar Council with the flexibility to deal with various situations, like the recent movement restrictions imposed as a result of the COVID-19 pandemic.

A G Kalidas
Secretary
Malaysian Bar